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## HWH Trading Corp., and Dragon Land Trading Inc., and U.S. Gardens Inc., alter egos *and* Industrial Union 460/640, Industrial Workers of the World. Case 29–CA–28419

January 25, 2008

# BY MEMBERS LIEBMAN AND SCHAUMBER DECISION AND ORDER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charged filed by the Union on July 30 and September 28, 2007, respectively, the General Counsel issued the complaint on October 3, 2007, against HWH Trading Corp., and Dragon Land Trading Inc., and U.S. Gardens Inc., alter egos, the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On November 6, 2007, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on November 8, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

On the entire record, the National Labor Relations Board<sup>1</sup> makes the following

### Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by October 17, 2007, all of the allegations in the complaint could be considered admitted as true. Further, the undisputed allegations in the motion disclose that the Region, by letter dated October 19, 2007, notified the Respondent that unless an answer was received by October 26, 2007, a motion for

default judgment would be filed. The Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

## FINDINGS OF FACT

#### I. JURISDICTION

At all material times, Respondent HWH Trading Corp. (HWH), a domestic corporation, with its principal office and place of business located at 1250 Metropolitan Avenue, Brooklyn, New York (the Metropolitan facility), has been engaged in the business of food and restaurant supply.

At all material times, Respondent Dragon Land Trading Inc. (Dragon Land), a domestic corporation, with its principal office and place of business located at the Metropolitan facility, has been engaged in the business of food and restaurant supply.

At all material times, Respondent U.S. Gardens Inc. (Gardens), a domestic corporation, with its principal office and place of business located at 51-01 Grand Avenue, Maspeth, New York (the Maspeth facility), has been engaged in the business of food and restaurant supply.

At all material times, HWH, Dragon Land, and Gardens have had substantially identical management, business purposes, operations, equipment, customers, and supervision, as well as ownership.

About July 15, 2007, Dragon Land was established by HWH as a disguised continuation of HWH.

During about August and September 2007, Gardens was established by Dragon Land as a disguised continuation of Dragon Land.

At all material times, based on the operations and conduct described above, HWH, Dragon Land, and Gardens have been alter egos within the meaning of the Act.

During the past year, a representative period, the Respondent, in the course and conduct of its business operations described above, sold and shipped goods and materials valued in excess of \$50,000 directly to customers located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Industrial Union 460/640, Industrial Workers of the World, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Quan Liu has been the manager of the Respondent, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

From about July 2, until about July 10, 2007, the Respondent reduced the work hours of employee Baltazar Ramos Vides.

From about July 2, until about July 15, 2007, the Respondent reduced the work hours of employee Reinaldo Beristain Miron.

Since about July 2, 2007, the Respondent has withheld from employees Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban, wages earned for work performed from mid-June 2007 until the end of the employees' employment, as set forth below.

About July 10, 2007, by the conduct described above, the Respondent caused the termination of employee Baltazar Ramos Vides.

About July 15, 2007, the Respondent discharged employees Reinaldo Beristain Miron and Gabino Rafael Hernandez Barraban, or, in the alternative, caused their termination by the conduct described above.

The Respondent engaged in the conduct described above because the employees joined, supported, and assisted the Union, engaged in concerted activities, and to discourage employees from engaging in these activities.

#### CONCLUSION OF LAW

By reducing its employees' hours of employment, withholding earned wages from its employees, and discharging or causing the termination of its employees, the Respondent has been discriminating in regard to the hire, or tenure, or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated the Act by discharging or causing the termination of employees Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban, we shall order the Respondent to offer these employees full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make each of these employees whole for any loss of earnings and other benefits suffered as a result of the Respondents' unlawful conduct, with interest. Similarly, having found that the Respondent has violated the Act by reducing the work hours of employees Baltazar Ramos Vides and Reinaldo Beristain Miron, we shall order the Respondent to make them whole for wages lost because of this unlawful reduction. Having found that the Respondent unlawfully withheld the wages of Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban, we shall order the Respondent to make them whole for lost wages attributable to this unlawful withholding.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files and records any and all references to the unlawful reduction of work hours and unlawful terminations of Vides, Miron, and Barraban, and to notify the employees in writing that this has been done and that the reduction of work hours and terminations will not be used against them in any way.

#### **ORDER**

The National Labor Relations Board orders that the Respondent, HWH Trading Corp., and Dragon Land Trading Inc., and U.S. Gardens Inc., alter egos, Brooklyn and Maspeth, New York, their officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discharging employees or causing employees to be terminated because of their union or protected concerted activities, or to discourage support for Industrial Union 460/640, Industrial Workers of the World (the Union).
- (b) Reducing the work hours of employees because of their union or protected concerted activities, or to discourage support for the Union.
- (c) Withholding wages from employees because of their union or protected concerted activities, or to discourage support for the Union.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any rights and privileges previously enjoyed.
- (b) Make Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban whole for any loss of earnings and other benefits suffered as a

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result of the unlawful terminations, with interest, in the manner set forth in the remedy section of this Decision.

- (c) Restore the work hours of Baltazar Ramos Vides and Reinaldo Beristain Miron.
- (d) Make whole Baltazar Ramos Vides and Reinaldo Beristain Miron for any loss of earnings and other benefits suffered as a result of the unlawful reduction of their work hours, with interest, in the manner set forth in the remedy section of this Decision.
- (e) Make Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban whole for any loss of earnings and other benefits suffered as a result of the unlawful withholding of their wages, with interest, in the manner set forth in the remedy section of this Decision.
- (f) Within 14 days from the date of this Order, remove from its files all references to the unlawful reduction of hours of employment and unlawful terminations of Vides, Miron, and Barraban and within 3 days thereafter notify the employees in writing that this has been done and that the reduction of work hours and terminations will not be used against them in any way.
- (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (h) Within 14 days after service by the Region, post at its facilities in Brooklyn and Maspeth, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent goes out of business or closes the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense,

a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 2, 2007.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 25, 2008

Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

## (SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees or cause employees to be terminated because of their union or protected concerted activities, or to discourage support for Industrial Union 460/640, Industrial Workers of the World (the Union).

WE WILL NOT reduce the work hours of employees because of their union or protected concerted activities, or to discourage support for the Union.

WE WILL NOT withhold wages from employees because of their union or protected concerted activities, or to discourage support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

<sup>&</sup>lt;sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of this Order, offer Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any rights and privileges previously enjoyed.

WE WILL make Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban whole for any loss of earnings and other benefits they suffered as a result of their unlawful terminations, with interest

WE WILL restore the work hours of Baltazar Ramos Vides and Reinaldo Beristain Miron.

WE WILL make whole Baltazar Ramos Vides and Reinaldo Beristain Miron for any loss of earnings and other benefits they suffered as a result of the unlawful reduction of their work hours, with interest.

WE WILL make Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban whole for any loss of earnings and other benefits they suffered as a result of the unlawful withholding of their wages, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files all references to the unlawful reduction of work hours and unlawful terminations, and WE WILL, within 3 days thereafter, notify Baltazar Ramos Vides, Reinaldo Beristain Miron, and Gabino Rafael Hernandez Barraban in writing that this has been done and that the discharges will not be used against them in any way.

HWH TRADING CORP., AND DRAGON LAND TRADING INC., AND U.S. GARDENS INC., ALTER EGOS